



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-O-B-

DATE: OCT. 20, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a mathematics teacher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In her appeal, the Petitioner argues that she satisfies the national interest waiver requirements.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. —

(A) In general. — Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

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who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General¹ may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Petitioner received a bachelor of science degree in mathematics from [REDACTED] in the Philippines. The record reflects that the Petitioner holds the foreign equivalent of a U.S. bachelor's

¹ Pursuant to section 1517 of the Homeland Security Act of 2002 (“HSA”), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

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degree in education with a major in mathematics and has progressive post-baccalaureate experience as a teacher equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest according to the three-pronged analysis set forth in *NYSDOT*.

A. Substantial Intrinsic Merit

The Petitioner previously taught mathematics in the Philippines and [REDACTED] Maryland. At the time of filing, the Petitioner was teaching mathematics at [REDACTED] in New Mexico. The Petitioner provided documentation showing that her work as a high school mathematics teacher is in an area of substantial intrinsic merit. Accordingly, the record supports the Director's determination that the Petitioner meets the first prong of the *NYSDOT* national interest analysis.

B. National in Scope

The Director found that the proposed benefit of the Petitioner's work as a school teacher would not be national in scope. The Petitioner has not provided evidence establishing that the benefits of her work would extend beyond her students and school districts such that they will have a national impact. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. In the present matter, the Petitioner has not shown the impact of her work as mathematics instructor beyond the localities where she teaches and, therefore, that her proposed benefits are national in scope. The Petitioner claims that her work is national in scope stating that, although her work is "limited geographically within the four (4) corners of her classroom," her achievements should be "taken collectively with all other teachers in the state of intended employment and valued in relation to the standard set by the United States Government." The Petitioner argues that the national priority of "closing the achievement gap," as articulated by the No Child Left Behind Act (NCLB) of 2001, means that "the function of a middle school mathematics teacher from a particular school in a given state, is truly material in achieving the 'national level

benefits' of closing the achievement gap, making the position as having national character and impact."² The Petitioner also points to her implementation of techniques in Science, Technology, Engineering, and Math (STEM) disciplines and contends that "because the NCLB Act is designed to be implemented by and at all levels of the public education system . . . the impact of [the Petitioner's] proven success in raising proficiency of her students transcends the classroom and imparts national-level benefits."

The Petitioner submits letters favorably attesting to her teaching abilities using varied techniques and noting her dedication. The Petitioner also points to her use of STEM techniques in the classroom and her "competency of the content areas she was assigned." While STEM teaching has substantial merit in relation to U.S. educational interests, the record does not indicate by a preponderance of the evidence that the Petitioner would be engaged in activities that would impact the field of STEM education or otherwise have implications beyond her own students. Classroom instruction and mentorship, while important to individual students and to the institution at which it occurs, does not generally rise to the level of having national importance to merit waiver of the job offer requirement.

The Petitioner also provided evidence discussing the state of education in the United States generally. For example, the Petitioner submitted a copy of President George Bush's remarks following the signing of the Immigration Act of 1990, along with the following articles: "Supporting Science, Technology, Engineering, and Mathematics Education, Reauthorizing the Elementary and Secondary Education Act," "Effective Programs in Middle and High School Mathematics: A Best-Evidence Synthesis," and, "STEM Sell: Are Math and Science Really More Important Than Other Subjects?" These articles do not specifically refer to the Petitioner or her work, nor do they explain how the Petitioner's work has had a national impact.

While we acknowledge the Petitioner's use of unique methods and initiatives to encourage her students' academic progress, we do not find evidence that the benefits of her work have extended beyond her school or district. General arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves, establish that an individual benefits the national interest by virtue of engaging in the field. *NYSDOT* at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. None of the preceding documents demonstrate that the Petitioner's specific work as a teacher has affected the field on a national level.

In the appeal brief, the Petitioner states that she has proven her "capability to serve on national level" since she has worked in "various major jurisdictions." Working as a teacher in different schools or districts does not establish influence on the field as a whole. We acknowledge that the Petitioner has contributed to her students' progress in mathematics, and she has taught in various schools in Maryland and New Mexico, however, she has not provided evidence reflecting that her work for local school districts has had, or will have, a national effect. As the Petitioner has not demonstrated

² No Child Left Behind (NCLB) Act of 2001, 20 U.S.C.A. § 6301 *et seq.* (West 2003)

the national scope of her work as a mathematics teacher, she does not meet the second prong of the *NYSDOT* national interest analysis.

C. Serving the National Interest

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

The Petitioner submitted academic records, letters confirming her employment history, evidence of her credentials and certifications as a teacher, and various awards and certificates. University degrees, occupational experience, licenses and professional certifications, membership in associations, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. See 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), (E), and (F), respectively. As individuals of exceptional ability and members of the professions holding an advanced degree are generally subject to the job offer/labor certification requirement, they cannot qualify for a national interest waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in their field. In addition to demonstrating eligibility for the underlying immigrant visa classification, an individual requesting a waiver of the job offer must satisfy the three prongs of the *NYSDOT* national interest analysis. Without evidence demonstrating that the Petitioner's work has affected the field as a whole, employment in a beneficial occupation such as a teacher does not, by itself, qualify her for the national interest waiver.

The Petitioner also submitted numerous certificates of participation, completion, and attendance for training courses and seminars relating to her professional development. While taking courses and attending seminars are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

The Petitioner states that "the American work force will directly benefit from her waiver, because federally funded schools for the education of children will continue to meet the standards required under the law." She contends that the demand for highly qualified teachers has "escalated" due to the "poor performance of American students compared to other nations." The Petitioner did not submit evidence, however, that indicates that her work has increased the performance of American students in general or explain how her work as a classroom teacher will lead to benefits for the American work force. There is no documentation demonstrating that the Petitioner's work has had an impact or influence outside of the school where she has taught.

In addition, the Petitioner submitted letters of recommendation from former colleagues, supervisors, students, and parents of students, attesting to her teaching expertise and positive impact on student performance. The references discussed the Petitioner's talent, dedication, and contributions to her schools, but they did not indicate that she has had the wider impact and influence necessary to qualify for the national interest waiver under *NYSDOT*.

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For example, the Petitioner provided a letter of support from [redacted] academic content liaison for [redacted] who states that the Petitioner is a “dedicated hard-working teacher,” and that “she always goes above and beyond to prepare meaningful lessons for her students.” Similarly, [redacted] principal, [redacted] describes the Petitioner as “highly competent, hard-working and dedicated to her work.” [redacted] academic dean, [redacted] also notes the Petitioner’s dedication to her students and writes that “she has demonstrated commendable performance to create an environment that is conducive to learning.” While the letters uniformly attest to the Petitioner’s hard work and dedication to her students, they do not indicate how the Petitioner’s work has altered teaching practices outside of her school district or has otherwise influenced the field of education as a whole.

Several letters also commend the Petitioner on her use of a wide variety of instructional techniques, hands-on activities, and applications to real world problems. For example, [redacted] bridge/night school coordinator for [redacted] states that the Petitioner “prepared varied and differentiated students’ activities that would address the goals and objectives that were aligned to the curriculum.” [redacted] special education teacher at [redacted] compliments the Petitioner on her ability to work “harmoniously with colleagues, administration, parents, and community,” and her “collaborative” teaching style. Like the letters noted above, these statements do not indicate that the Petitioner’s work has extended beyond her classroom or district or that it has impacted the field generally. The Petitioner must still demonstrate specific prior achievements in the field that establish her ability to benefit the national interest. *Id.* at 219, n.6.

In a supporting statement, the Petitioner points to evidence of teacher shortages nationwide and indicates that a lack of qualified teachers can hinder students’ pursuit of a college degree. The U.S. Department of Labor (DOL) addresses worker shortages through the labor certification process, and therefore a shortage of qualified professionals alone is not sufficient to demonstrate eligibility for the national interest waiver. *See NYSDOT*, 22 I&N Dec. at 218. In addition, the Petitioner contends that her expertise in mathematics and her background teaching in different states and countries, offers students a benefit that serves the national interest. Any statement that a petitioner possesses useful skills or a “unique background,” however, relates to whether similarly trained workers are available in the United States and is an issue under the jurisdiction of the DOL through the labor certification process. *Id.* at 221.

The Petitioner requests that we consider her dedication, the actions she has taken to prepare her students, her volunteer work at school, and the praise offered by former students. While the submitted documentation indicates that the Petitioner is an effective teacher who is highly respected by her students, the record does not show that her work as a middle and high school teacher has influenced the field at a level sufficient to justify a waiver of the job offer requirement. Accordingly, the Petitioner has not demonstrated that she meets the third prong of the *NYSDOT* national interest analysis.

III. CONCLUSION

Considering the letters of support and other evidence in the aggregate, the Petitioner has not established by a preponderance of the evidence that the proposed benefits of her work are national in scope, that she has a past record of demonstrable achievement with some degree of influence on the field as a whole, or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. Accordingly, she has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

Cite as *Matter of S-O-B-*, ID 79458 (AAO Oct. 20, 2016)